

SEP 24 2018

John H Michael Schneider, Jr.
 Defendant
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 Pro Se representation for defendant

Clerk, U.S. Courts
 District Of Montana
 Billings Division

**IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF MONTANA**

UNITED STATES OF AMERICA

Plaintiff

vs.

John Henry Michael Schneider, Jr,

Defendant

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) **D.C. No. CR 17-77-BLG-SPW**

) **U.S. District Court for Montana,
 Billings**

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**Motion to revise and correct
 Presentencing Report by the
 Probation Service Office US
 District Court for Montana,
 Billings**

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Defendant John Henry Michael Schneider Jr respectfully submits this application as a pro se defendant in the above matter pending appeal to the ninth circuit court of appeals filed on 27 August 2018, pursuant to 18 U.S.C. 3552(a) and FRAP 32 (C).

Argument

On 15 August 2018 John H Schneider was sentenced to 24 months custodial care having plead guilty to count III of the superseding indictment 18 U.S. Code § 152 (1) and ordered to pay restitution to the bankruptcy estate of John H Schneider.

John H Schneider submitted an appeal of this sentence based upon ineffective defense counsel. The 9th Circuit court of Appeals opened case No. 18-30187 and on 10 September 2018, issued a Stay of sentence pending disposition of motion (9th Circuit court R 9-1.2(e)).

The Pre-sentencing report was completed by the probation service office of the US District Court for Montana, Billings pursuant to 18 U.S. Code § 3603 and Rule 32 (d), for the honorable Judge Watters to review at the time of sentencing. This report contained a significant error regarding the defendants self-reporting of prior criminal activity, line 43 of the accepted presentencing report. In the report, the “disposition” of the case if left “unknown.” It was incumbent on both probation service officer and in particular defense counsel to ensure the report was accurate and complete. As argued to the honorable judge Watters and the 9th Circuit Court of Appeals, ineffective counsel inordinately harmed defendant John H Schneider throughout the case and failed to mitigate spurious and inaccurate conclusions throughout the case, as exemplified by this failure to correct the clerical error of the probation service office regarding known inaccurate information in this critical report . This error causes irreparable harm to the defendant, as illustrated in

attached communication from the US Marshals service and the subsequent offender classification of defendant John H Schneider (Exhibit B).

Once defendant Schneider became aware of this classification and was remanded to an Administrative facility as a moderate risk detainee, Defendant Schneider simply researched the information provided to the probation service office and defense attorney regarding the issue on line 43, spending less than 10 minutes locating all pertinent information in Exhibit A.

As stated in FRAP Rule 36, this clerical error maybe corrected by the court at any time.

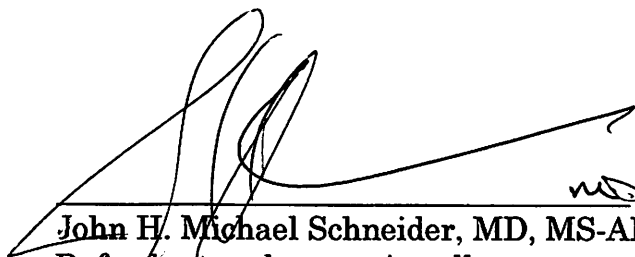
Without modification and resubmission of the presentencing report by the US Probation Service Office, the Federal Bureau of Prisons will maintain defendant Schneider as a moderate risk offender and ignore the honorable Judge Watters recommendation of detention in a minimum risk security facility. Although there exists potential administrative remedy procedures to consider the risk designation once incarcerated (Exhibit C), this process is onerous, not guaranteed and requires months before disposition is even considered. In addition, the designation has significant adverse impact on “prison employment, prison transfers, visitation and mail privileges, sentencing credit, work study, and physical and mental health treatment” (ID). Regarding the Advisory Committee (*Minutes of the Advisory Committee on Federal Rules of Criminal Procedure (Apr. 25-26, 2001)*), recommends “...because of the [PSR's] critical role in post-sentence administration, counsel may wish to point out

to the court those matters that are typically considered by the [BOP] in designating the place of confinement.... If counsel objects to material in the [PSR] that could affect the defendant's service of sentence, the court may resolve the objection..."

(ID). Unfortunately ineffective counsel against failed to object to this critical mistaken information in the Report.

Defendant Schneider respectfully requests the honorable Judge Watters to Order a corrected resubmission of the presentencing Report pursuant to 18 U.S. Code § 3603 B (10) to the US Marshalls service such that the Federal Bureau of prisons will have complete and accurate information when assessing appellant/defendant Schneider's risk detainer classification.

Respectfully Submitted this 17th day of September 2018



John H. Michael Schneider, MD, MS-ADR
Defendant and *pro se* Appellant

CERTIFICATE OF SERVICE

I, John H Michael Schneider, hereby certify that on September 17th, 2018, I filed the foregoing Motion to correct PSR document with the Clerk of U.S. District Court pursuant to Rule 4(b) F.R.A.P. and provided service to Plaintiff via US Mail.



John H Michael Schneider Appellant/ Defendant